

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

The amendments to subrules 26.14(6) and 26.14(7) and the rescision of subrule 26.14(9) provide that a party who appeals a decision and then does not participate in the appeal hearing may have the appeal dismissed at the discretion of the presiding officer. The appealing party may request to reopen the hearing if that party had good cause for failing to appear.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on November 5, 2013, a public hearing will be held on November 6, 2013, at 3 p.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments.

The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons not later than November 5, 2013, to Joseph Bervid, Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to joseph.bervid@iwd.iowa.gov.

The Workforce Development Department does not intend to grant waivers under the provision of these rules, other than as may be allowed under the Department’s general rules regarding waivers found at 871—Chapter 41.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 96.6(3) and chapter 17A.

The following amendments are proposed.

ITEM 1. Amend subrules 26.14(6) and 26.14(7) as follows:

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party’s late arrival.

26.14(7) If a party has not responded to a notice of telephone hearing by providing the appeals section bureau with the names and telephone numbers of ~~its witnesses~~ the persons who are participating

in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire *ex parte* as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

ITEM 2. Rescind and reserve subrule **26.14(9)**.